

United States District Court
For The District Of Puerto Rico

RECEIVED & FILED
2008 SEP -9 PM 3:18
CLERK'S OFFICE

United States Of America,

v.

Case No. 97-271 (GAG)

Carlos Gutierrez-Naranjo,

Defendant,

Motion To Compel Pursuant To Rule 37(b)/Mandamus
§1651(a) To Comply To Court Orders Of June 9, 2008 & 07-28-08.

COMES NOW, defendant pro se at FCI Fort Dix, NJ, files this motion to compel the government pursuant to Rule 37(b)/Mandamus §1651(a) to comply with this court order of June 9, 2008. The defendant basis this request on the grounds set forth below.

1) Pending before this court is a judgment order entered on February 4, 2008, directing the government to return two forty foot (40ft) trailers belonging to the defendant in the published case, U.S. v. Gutierrez-Naranjo, 534 F.Supp.2d 246 (D. Puerto Rico 2008) (Hon. Gustavo, Judge).

2) By notice dated March 28, 2008, the defendant requested the government, through and by counsel, Ms. Maritza Gonzalez-Rivera, Assistant United States Attorney, to credit the defendant prison commissary account in the the amount from the sale of the two 40ft trailers. (copy of notice attach as Exh. 1).

3) On or about May, 15, 2008, the defendant filed a motion under the writ of mandamus to enforce compliance with this court order of February 4, 2008, after no answer was received from the March 28, 2008, notice.

4) On or about June 9, 2008, the Honorable Camille L. Velez-Rive, United States Magistrate Judge ordered the government to deposit the check from the sale of the two 40ft trailers in the defendant's prison commissary account within 20 days from the date of the order.

5) By notice dated July 16, 2008, the defendant notified the court with copies served to the government that the government has not complied with this court's order of June 9, 2008 to credit the defendant's prison commissary account with the check from the sales of the two 40ft trailers. (attach exh. 2, letter to Hon. Camille Velez-Rive, U.S.M.J.).

6) Till this date of filing this action, the government has not complied by depositing the check from the sale of the two 40ft trailers in the defendant's prison commissary account.

7) The defendant now request for a contempt order against Ms. Maritza Gonzalez-Rivera, Assistant United Attorney for failure to comply to this court standing orders of February 4, 2008, and June 9, 2008, and July 28, 2008.

8) The defendant also request for a possible sanctions that is appropriate to deter such conduct which may include monetary and other related sanctions deem just by the court.

9) The defendant recognizes that the federal courts contempt order to ensure compliance with court order should be a last resort to be undertaken only after all other means to achieve the ends legitimately sought by the court have been exhausted. In re Attorney General of the U.S., 596 F.2d 58, 65 (2nd Cir. 1979).

10) By order dated July 28, 2008, the Honorable Gustavo A. Gelpi, United States District Judge, directed the government to comply with its obligation within thirty (30) days and denied the defendant's request for sanctions.

11) The government has failed to respect and honor this court consistent orders over six (6) months when the first order was issued in February, another in June, and the present one in July.

Wherefore, the defendant prays that relief be granted to impose sanctions and enforce this court orders of February 4, 2008, June 9, 2008, and July 28, 2008, directing the government to deposit the check with interest accrue from the sales of the two 40ft trailers in the defendant's prison commissary account within seven (7) days from the date of such order.

CONCLUSION:

For the reasons stated, relief be granted.

Respectfully Submitted,



Carlos Gutierrez-Naranjo
#31804-039
FCI Fort Dix
P.O.Box 2000
Fort Dix, NJ 08640.

August 29, 2008.

PROOF OF SERVICE

I Certify that on 09-02-08 (date) I mailed a copy of all of the attachments via first class mail to the following parties at the addresses listed below:

Maritza Gonzalez-Rivera
Assistant United States Attorney
Torre Chardon
350 Chardon Street
Hato Rey, PR 00918.

courtesy copy to:

Honorable Camille L. Velez-Rive
United States Magistrate Judge
Courthouse and Federal Bldg., Room 150
San Juan, PR 00918-1767.

PROOF OF SERVICE FOR INSTITUTIONALIZED OR INCARCERATED LITIGANTS

In addition to the above proof of service all litigants who are currently institutionalized or incarcerated should include the following statement on all documents to be filed with this Court:

I certify that this document was given to prison officials on 09-02-08 (date) for forwarding to the Court.
I certify under penalty of perjury that the foregoing is true and correct. 28 U.S.C. 1746.

Carlos Gutierrez-Arango
(Signature)

09-02-08
(Date)